

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE LIBOR-BASED FINANCIAL
INSTRUMENTS ANTITRUST LITIGATION

MDL No. 2262

THIS DOCUMENT RELATES TO:

Master File No. 1:11-md-2262-
NRB
ECF Case
**ORAL ARGUMENT
REQUESTED**

<i>National Credit Union Administration Board, et al. v. Credit Suisse, et al.</i>	13-cv-7394
<i>Bay Area Toll Authority v. Bank of Am. Corp., et al.</i>	14-cv-3094
<i>CEMA Joint Venture v. Charter One Bank, N.A., et al.</i>	13-cv-5511
<i>City of Riverside v. Bank of Am. Corp., et al.</i>	13-cv-597
<i>City of Houston v. Bank of Am. Corp., et al.</i>	13-cv-5616
<i>Salix Capital US Inc. v. Banc of Am. Sec., et al.</i>	13-cv-4018
<i>Prudential Investment Portfolios 2 v. Bank of Am. Corp., et al.</i>	14-cv-04189
<i>The City of Philadelphia v. Bank of Am. Corp., et al.</i>	13-cv-6020
<i>The Regents of the University of California v. Bank of Am. Corp., et al.</i>	13-cv-05186
<i>Cnty. of Mendocino v. Bank of Am. Corp., et al.</i>	13-cv-8644
<i>Darby Fin. Products and Capital Ventures Int'l v. Barclays, et al.</i>	13-cv-8799
<i>The Charles Schwab Corp., et al. v. Bank of Am. Corp., et al.</i>	13-cv-7005
<i>City of Richmond, et al. v. Bank of Am. Corp., et al.</i>	13-cv-627
<i>East Bay Mun. Utility Dist. v. Bank of Am. Corp., et al.</i>	13-cv-626
<i>Cnty. of San Diego v. Bank of Am. Corp., et al.</i>	13-cv-667
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<i>Cnty. of Sonoma v. Bank of Am. Corp., et al.</i>	13-cv-5187
<i>Principal Funds, Inc., et al. v. Bank of Am. Corp., et al.</i>	13-cv-6013
<i>Principal Fin. Group, Inc., et al. v. Bank of Am. Corp., et al.</i>	13-cv-6014

**REPLY MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS DIRECT ACTION PLAINTIFFS'
REQUESTS FOR INJUNCTIVE, EQUITABLE, AND DECLARATORY RELIEF**

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Fed. R. Civ. P. 12(b)(6).....	<i>passim</i>

Plaintiffs' requests for prospective injunctive, equitable, and declaratory relief should be dismissed pursuant to Rules 12(b)(1) and 12(b)(6) because Plaintiffs fail to plead that any alleged manipulation of LIBOR was ongoing when their complaints were filed or is likely to reoccur, nor that legal remedies would be insufficient. Plaintiffs' arguments in opposition are without merit.

ARGUMENT

As shown in Defendants' opening brief, Plaintiffs lack standing to seek prospective injunctive, equitable, and declaratory relief. They fail to plead the basic requirement of irreparable injury because none of the complaints plausibly alleges that any misconduct involving USD LIBOR was ongoing when Plaintiffs filed their complaints, nor that Plaintiffs are likely to suffer imminent future injury "due to 'a recurrence of the allegedly unlawful conduct.'" *Liriano v. ICE/DHS*, 827 F. Supp. 2d 264, 272 (S.D.N.Y. 2011) (Buchwald, J.) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 107 n. 8 (1983)); *see also* Dkt. No. 753 ("Defs' Br.") at 1-5. Plaintiffs also cannot show that the monetary relief they seek—the overwhelming focus of their suits—would be inadequate compensation for their alleged financial losses on USD LIBOR-linked financial instruments. *See* Defs' Br. at 6-7.

Plaintiffs' opposition briefs only reinforce these points. Indeed, certain Plaintiffs correctly concede that any LIBOR manipulation had ceased by the time their first complaints were filed in January 2013, Defs' Br. at 4, n. 6, stating that "Post-Conspiracy," "[a]fter Barclays exposed the unlawful conduct in 2012, competition returned to the markets for interest-rate derivatives and Benchmark-Based Products," Dkt. No. 883 ("Antitrust Opp'n") at 14. There is not a single factual allegation in any complaint—let alone a plausible allegation—that contradicts this conclusion or that indicates any harm or misconduct is ongoing or likely to reoccur. Plaintiffs may not pursue equitable relief merely because they "do not know" when

Defendants’ misconduct ended or because certain complaints allege that the misconduct occurred “until *at least* May of 2010” and that Plaintiffs suffered injury “over the course of years.” Dkt. No. 890 (“Fraud Opp’n”) at 49 & n.100 (citing PF Compl. ¶¶ 2, 135). “[S]ubjective fears about future contingencies do not confer standing [to seek injunctive relief] unless they have an objectively reasonable basis sufficient to render them more than speculations about non-imminent events.” *Hakim v. Chertoff*, 447 F. Supp. 2d 325, 328 (S.D.N.Y. 2006). Plaintiffs’ claimed uncertainty as to whether LIBOR manipulation is continuing or likely to reoccur is speculation contradicted by Plaintiffs’ own allegations that any such activity ceased years ago, Defs’ Br. at 2, nn. 3 & 4, and is undermined by fundamental changes that have occurred in the administration of USD LIBOR and by government settlements that impose cooperation obligations on many defendants, Defs’ Br. at 5-6.¹

Plaintiffs’ contention that there is uncertainty regarding the changes to the administration of LIBOR, and that Defendants failed to “show that a different oversight committee will be any more effective at preventing the conspiracy or manipulation from continuing,” Fraud Opp’n at 49-50, fundamentally misconstrues the question at issue in this motion. It is Plaintiffs’ burden to allege a likelihood of future injury. Plaintiffs cannot satisfy that burden by trying to poke holes in the additional, independent point made by Defendants that changes to the administration of

¹ Plaintiffs’ failure to allege a likelihood of future injury also cannot be cured by allegations (even were they made in the complaints—and they are not) that Defendants’ past misconduct will somehow continue to injure Plaintiffs in the future in connection with currently held LIBOR-linked financial instruments. *See, e.g., In re DDAVP Indirect Purchaser Antitrust Litig.*, 903 F. Supp. 2d 198, 209 (S.D.N.Y. 2012) (dismissing claim for injunctive relief under Rules 12(b)(1) and 12(b)(6) and explaining that “[i]n the context of injunctive relief, ... lingering monetary injury, without any ongoing threat of recurrent violations [to the plaintiffs], is not sufficient to confer standing to seek an injunction”).

LIBOR “would belie any allegation—*had Plaintiffs made one*—that they are likely to suffer the same injury in the future.” Defs’ Br. at 6 (emphasis added).²

Finally, Plaintiffs’ requests for injunctive and other equitable relief also fail because Plaintiffs have an adequate remedy at law. Plaintiffs have no response. Their unremarkable assertion that “a prayer for injunctive relief is common in fraud, manipulation and conspiracy cases” in which motions to dismiss have been denied, Fraud Opp’n at 50, does not change the fact that Plaintiffs have not satisfied their burden to plead entitlement to such relief.³ And Plaintiffs cannot explain why monetary damages, “the classic form of legal relief,” *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 210 (2002), would not make them whole for their alleged financial losses on LIBOR-linked financial instruments. *See Bezuska v. L.A. Models, Inc.*, No. 04 Civ. 7703, 2006 WL 770526, at *17, n.32 (S.D.N.Y. Mar. 24, 2006) (Buchwald, J.) (“[I]t would be a misuse of the Court’s equitable powers to issue an injunction when the plaintiffs have an adequate remedy at law, namely their breach of contract claims.”).

CONCLUSION

Plaintiffs’ requests for injunctive, equitable, and declaratory relief should be dismissed.

² Plaintiffs contend that Defendants cite “only 4 cases,” and attempt to distinguish those cases superficially on their facts or because some were not decided at the motion to dismiss stage. *See* Fraud Opp’n at 50 n.104. Not only do those cases fully support the propositions for which they are cited, but Plaintiffs also ignore the many other cases that Defendants cite in which courts—including this Court—have dismissed requests for injunctive, declaratory, or equitable relief pursuant to Rules 12(b)(1) and/or 12(b)(6). *See Bezuska v. L.A. Models, Inc.*, No. 04 Civ. 7703, 2006 WL 770526, at *7 & *17 n.32 (S.D.N.Y. Mar. 24, 2006) (Buchwald, J.) (dismissing claim for injunctive relief under Rule 12(b)(6)); *In re DDAVP Indirect Purchaser Antitrust Litig.*, 903 F. Supp. 2d at 204, 210 (similar); *In re G-fees Antitrust Litig.*, 584 F. Supp. 2d 26, 29, 34-35 (D.D.C. 2008) (similar); *MacIssac v. Town of Poughkeepsie*, 770 F. Supp. 2d 587, 600 (S.D.N.Y. 2011) (similar); *Nechis v. Oxford Health Plans, Inc.*, 421 F.3d 96, 98, 104 (2d Cir. 2005) (similar).

³ The cases Plaintiffs cite (Fraud Opp’n at 50) do not stand for the proposition that unsupported requests for equitable relief may survive a motion to dismiss. Rather, in those cases the motions to dismiss were denied on entirely different grounds, or on the basis of the sufficiency of the specific allegations in those cases. *See SEC v. Pentagon Capital Mgmt. PLC*, 612 F. Supp. 2d 241, 267 (S.D.N.Y. 2009) (denying motion to dismiss claim for equitable disgorgement relief on statute of limitations grounds and injunctive relief because of sufficiency of allegations of future misconduct); *In re Elec. Books Antitrust Litig.*, 14 F. Supp. 3d 525, 533 (S.D.N.Y. 2014) (denying motion to dismiss for lack of standing where movant conceded plaintiffs’ standing to seek injunction); *In re Pa. Title Ins. Antitrust Litig.*, 648 F. Supp. 2d 663, 685 (E.D. Pa. 2009) (denying motion to dismiss claim for injunctive relief because of sufficiency of allegations of prospective harm).

December 23, 2014,

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